

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MICROSOFT CORPORATION,

Plaintiff,

V.

DATATERN, INC.,

Defendant.

CIVIL ACTION NO. 1:11-cv-02365-KBF
CIVIL ACTION NO. 1:11-cv-02648-KBF

SAP AG and SAP AMERICA, INC.,

Plaintiff,

V.

DATATERN, INC.,

Defendant.

**MEMORANDUM OF LAW IN SUPPORT
OF MOTION OF DATATERN, INC. TO SUBSTITUTE**

Dedendant, DataTern, Inc. (“DataTern”) moves this Court to substitute sealed Exhibit 15 to the Declaration of Kara Lynch In Support of DataTern, Inc.’s Opposition to Microsoft Corporation’s Motion for Summary Judgment of Non-Infringement of U.S. Patent Nos. 5,937,402 AND 6,101,502 (“Lynch Declaration”). As the paragraph 18, page 3, of the Lynch Declaration indicates, DataTern intended to file a true and correct copy of the Asset Purchase Agreement between Amphion Innovations, PLC, FireStar Software, Inc. and Richard Morgan, dated December 20, 2007 (“2007 Asset Purchase Agreement”) under seal. Instead, DataTern mistakenly filed the *2001* Asset Purchase Agreement between Ontos, Inc. and FireStar Software under seal as Exhibit 15.

In support of its Motion, DataTern states that Microsoft has a copy of the 2007 Asset Purchase Agreement, Microsoft does not oppose the substitution of the 2007 Asset Purchase Agreement as Exhibit 15 to the Lynch Declaration and that this substitution is necessary to facilitate the Court's understanding of certain arguments contained in DataTern's opposition papers.

Dated: December 11, 2012

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Attorneys for Defendant

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the above Memorandum in Support of Notice of Motion was served on this 11th day of December, 2012 upon counsel of record for Microsoft Corp., SAP AG and SAP America, Inc. via *ECF*.

/s/ Lee Carl Bromberg

Lee Carl Bromberg